FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BG/LAC/2020/0009**
HMCTS code (paper, video, audio)	**:**	**V: CVPREMOTE**
Property	**:**	**Flat 12, 6 Trinity Mews, London E1 3BT**
Applicants	**:**	**Mr P Stampfer and ten others**
Representative	**:**	**Mr P Stampfer**
Respondent	**:**	**Avon Ground Rents Ltd**
Representative	**:**	**Ms K Helmore of counsel**
Type of application	**:**	**For the determination of the liability to pay administration charges under paragraph 5 of schedule 11 to the Commonhold and Leasehold Reform Act 2002**
Tribunal members	**:**	**Judge S Brilliant** **Mr A Lewicki FRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of Hearing	**:**	**12 February 2021**
Date of decision	**:**	**26 February 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been not objected to by the parties. The form of remote hearing was by video V: CVPREMOTE. A face-to-face hearing was not held because it was not practicable and no-one requested the same. The documents that we were referred to are in two bundles totalling 828 pages. The order made is described at the end of these reasons.

Decisions of the tribunal

The Tribunal determines that the sum of £30.00 plus VAT is payable by the Applicants in respect of each demand of ground rents made by the Respondent. The particular charges referred to us are a collection fee of £36.00 including VAT for the period 1 July 2019 to 31 December 2019, and a further collection fee of £36.00 including VAT for the period 01 January 2020 to 30 June 2020. Although the sum of £72.00 is small, an important point of principle is involved.

The Tribunal also determines that it has no jurisdiction in respect of the payment of fees required for the registration of subleases.

The application

1. The Applicants seek a determination pursuant to paragraph 5 of schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to whether certain charges, alleged to be variable administration charges, are payable at all or, if payable, are of a reasonable amount.

2. The application breaks down into two discrete issues.

3. The first issue concerns fees charged for collecting the ground rent ("the ground rent charge issue"). The Applicant says that this charge would be a variable administration charge if the Respondent were entitled under the lease to charge it, but there is no provision in the lease enabling such a charge to be made. Alternatively, if there is such provision, the amount charged is unreasonable.

4. The Respondent accepts that if the lease permits such a charge this is an administration charge. It argues that this charge is payable under the lease, and that the amount charged is reasonable.

5. The second issue concerns fees charged for registering subleases ("the registration charge issue"). The Applicant says that this charge is a variable administration charge.

6. The Respondent denies this and relies upon the decision of Mr Martin Roger QC in the Upper Tribunal case of Proxima GR Properties Ltd v McGhee

[2014] UKUT 59 (LC).

The hearing

7. Mr Stampfer appeared in person, on behalf of the Applicants. The Respondent was represented by Ms Helmore of counsel. We are grateful to both of them for their written and oral submissions, and the civility with which the proceedings were conducted. Ms Helmore called Mr Ost, the property manager of the development employed by the Respondent.

The background

8. The Applicants are a set of leaseholders owning flats in a development which consists of two blocks of flats. Management is undertaken through an RTM company, but the Respondent remains as the landlord collecting the ground rent and registering subleases.

9. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

The directions

10. Directions were given on 25 October 2020. The Respondent was ordered to provide by 23 November 2020 all documents on which it wished to rely in support of its case that the charges were payable and reasonable.

11. During the week commencing 8 February 2021, the week of the hearing, the Respondent served three witness statements from Mr Ost attempting to fill the gaps in its evidence.

12. I asked Ms Helmore asked whether she had an application in respect of these three witness statements. She said that she did. I drew her attention to the fact the Supreme Court has held that the wording of the overriding objective in the 2013 Tribunal Rules does require the Tribunal to follow the line of cases commencing with *Mitchell v News Group Newspapers* [2013] EWCA Civ 1537, [2014] 2 All ER 430, [2014] 1 WLR 795 where there has been a failure to comply with a rule, practice direction or order. The authority for this in the Supreme Court is to be found in: *BPP Holdings Ltd v Revenue and Customs Comrs* [2017] UKSC 55, [2017] 4 All ER 756.

13. Ms Helmore grasped this nettle and sought to persuade me to admit the documents on the basis that they merely provided colour to what had already been disclosed.

14. The fact is there was no good excuse as to why a professional landlord, well known to this Tribunal, should have failed to serve the requisite evidence

in good time. There would have been enormous prejudice to the Applicants if we had allowed this evidence in. Accordingly, we did not give permission for the Respondent to rely upon this evidence.

The ground rent charge issue

Is it payable under the lease?

15. The bundle contained a copy of Mr Stampfer's lease dated 16 November 2010 ("the lease"). We were told that all the relevant leases were in similar form.

16. The service charge provisions in the lease are to be found in Schedule 7.

17. Paragraph 7-2.3.2 of Schedule 7 provides:

> *7-2.3.2 If the Landlord or a person connected with the Landlord or employed by the Landlord attends (where permitted by law) to:*
>
> *7-2.3.2.1 the supervision and management of the provision of services for the Building*
>
> *7-2.3.2.2 the preparation of statements or certificates of the Landlord's Expenses, or*
>
> *7-2.3.2.3 the auditing of the Landlord's expenses*
>
> *7-2.3.2.4* ***the collection of rents from the Building***
>
> ***Then an expense is to be deemed to be paid or a cost incurred by the Landlord, being a reasonable fee not exceeding that which independent agents might properly have charged for the same work.***

18. The collection of ground rents nowadays requires compliance with s.166 of the 2002. This requires the landlord to provide the lessee with a notice before any liability to make a payment of ground rent arises. The notice has to contain prescribed information.

19. The first question is whether this statutory notice can be said to relate to ***the collection of rents****?*

20. Mr Stampfer says that it does not. He develops a number of sophisticated arguments in paragraphs 12 and 13 of his statement of case. He says that **collecting** the ground rent is not the same as **demanding** it. Debt collectors pursue money owed which has already been demanded and is payable. He

refers to the Cambridge Dictionary which defines **collect** as receiving or asking for money which is owed. He also refers to the Consumer Credit Act 1974 which defines debt collection as the taking of steps to procure payment of debts due.

21. His argument is that before the ground rent is due it cannot be collected. If a s.166 notice and associated work is required, it is only after service of that notice that the ground rent can be collected. As a matter of logic, the notice and the associated work itself predates the collection, and cannot be seen as part of the collection process.

22. Ms Helmore more disagrees. She says that the service of the s.166 notice and associated work is part and parcel of the collection process. In order to collect, the landlord has to serve the notice and carry out work associated with it.

23. She has drawn our attention to the decision of Judge Dutton in this Tribunal in Newton House, 175 Queens Road, Croydon, Surrey CRO 2PX (LON/00AH/LAC/2018/0004).

24. This is a case on precisely this point. The judge held that the landlord was entitled to make a reasonable charge to recover the ground rent, and that the cost of an administration charge of £55 plus VAT for the administration associated with the collection of the rent was recoverable.

25. Although we are not bound by this decision, we prefer the submissions of Ms Helmore on this point. Serving the s.166 notice and the work associated with it are part and parcel of collecting the rent.

Was the amount charged reasonable?

26. The question then arises as to whether the amount charged was reasonable.

27. Mr Stampfer set out his arguments in paragraphs 5 to 11 of his statement of case. He states that independent agents do not charge for ground rent collection. Alternatively, he says that £7.14 a notice is what he has been told by Prime Property Management that it would charge. This is a reasonable sum.

28. Ms Ost was not allowed to rely on his comparables because this was part of the evidence we excluded. However he was taken through all the aspects of the work required to be done in the preparation of a s.166 notice.

29. What he told us corresponded entirely with what was recorded in paragraph 17 the Tribunal's decision in 5 Flats at 104 Torrington Way, London N7 6RY (LON/00AU/LAC/2016/0009):

> *It is also said that there are serious consequences if the notice required*

under section 166 of the Commonhold and Leasehold Reform Act 2002 is not in the correct format. It is said to be vital to ensure the notice is properly served and is not unreasonable for a freeholder to employ a professional managing agent to deal with these notices and collection of the ground rent to ensure that it can recover the ground rent. The work carried out is listed which includes checking the lease, issuing the notice, dealing with queries, monitoring bank details to recognise payment, recording payment and/or monitoring for non-payment, accounting to the freeholder and maintaining records/an office. In addition disbursements such as postage, bank charges and computer maintenance are incurred.

30. Mr Ost also explained that there are two departments of the Respondent involved, firstly the accounts' department, and secondly the property managers' department. Up to 15 minutes could be spent on each invoice. He said that the comparison with Prime Property Management was not a valid one as this firm was the managing agent of the development employed by the RTM company. A managing agent would charge less for the work connected with a s.166 notice as such charges would be part of the overall remuneration.

31. He also reminded us that very few managing agents be prepared only to collect ground rents. Ms Helmore was right when she said that Mr Stampfer was comparing apples with pears.

32. From our own knowledge and experience £30 plus VAT is a reasonable amount to charge. We also note in passing that £55 plus VAT was allowed in the Newton House case, and higher figures in 5 Flats at 104 Torrington Way.

The registration charge issue

33. The lessees' covenants in the lease are to be found in Schedule 5.

34. Paragraph 5-9.6 of Schedule 5 provides:

within 28 days of any assignment, charge, sublease or any transmission or other devolution relating to the Flat, the Tenant must produce a certified copy of the relevant document ***for registration*** *with the Landlord's solicitor, and must pay the Landlord's solicitor's reasonable charges for registration of at least £75 plus value added tax*

35. This Tribunal is bound by the decision of Mr Martin Roger QC in the Upper Tribunal case of Proxima GR Properties Ltd v McGhee [2014] UKUT 59 (LC).

36. In paragraph 22 he said:

A sum payable as a fee for ***registering*** *a document is not, in my judgment, payable "directly or indirectly for or in connection with the grant of*

approvals under [a] lease or applications for such approvals" so as to come within paragraph 1(1)(a) of Schedule 11 to the 2002 Act. If a request was made for the landlord's approval of a proposed underletting, and that approval was granted but the underletting did not then proceed, there would be no question of a registration fee being payable under paragraph 28 because no transactions would have taken place. The written notice which the respondent was required to give under paragraph 27 of the eighth schedule to the lease was not a request for an approval of any sort, nor was the charge which the appellant is entitled to make for registering the transaction of which notice is given a charge for the grant of an approval or in connection with an application for approval. This conclusion is consistent with views expressed in the leading text books: Commercial and Residential Service Charges, Rosenthal and others (2013) at paragraph 29-54, and Service Charges and Management, Tanfield Chambers, (third edition) (2014) at paragraph 17-007).

37. We are bound by this decision and unhesitatingly come to the conclusion that we had no jurisdiction to deal with the registration charge issue.

RTM and the County Court proceedings

38. Mr Stampfer asked us to rule on whether the correct person to be paid any registration charge was the landlord or the RTM company. In the event, this was not an issue which was before us and we declined to make a ruling in the light of this lack of jurisdiction.

39. Mr Stamper also complained that in parallel proceedings in the County Court the Respondent asked the court not to deal with the registration charge issue, as it was going to be dealt with by us. The Respondent then changes mind and took the stance, which succeeded, that we had no jurisdiction to deal with the matter.

40. We are not in a position to say whether or not this is an accurate representation of what happened, nor was the Respondent in a position to deal with it. It is perhaps unfortunate that the whole of the case was not transferred so that we could exercise our County Court jurisdiction simultaneously.

Costs

41. There is no suggestion that either side is entitled to rule 13 costs.

42. It would not be just or equitable to prevent the Respondent from recovering its costs under the lease (insofar as it can) because the Applicants did not succeed on either issue before us.

Name: Simon Brilliant **Date:** 26 February 2021

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).